(9)

No. 93-1660

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

STATE OF ARIZONA,

Petitioner,

—v.—

ISAAC EVANS,

Respondent.

ON WRIT OF *CERTIORARI*
TO THE SUPREME COURT OF ARIZONA

BRIEF *AMICUS CURIAE* OF THE AMERICAN CIVIL LIBERTIES UNION AND THE ARIZONA CIVIL LIBERTIES UNION IN SUPPORT OF RESPONDENT

Tracey Maclin
(*Counsel of Record*)
Boston University School of Law
765 Commonwealth Avenue
Boston, Massachusetts 02215
(617) 353-4688

Steven R. Shapiro
American Civil Liberties Union
Foundation
132 West 43 Street
New York, New York 10036
(212) 944-9800

Alice L. Bendheim
1542 West McDowell Road
Phoenix, Arizona 85007
(602) 253-2954

33

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Other Authorities

INTEREST OF *AMICI*[1]

The American Civil Liberties Union (ACLU) is a nationwide nonprofit, nonpartisan organization with nearly 300,000 members dedicated to the principles of liberty and equality embodied in the Bill of Rights. The Arizona Civil Liberties Union is one of its statewide affiliates. Since its founding in 1920, the ACLU has frequently appeared before this Court, both as direct counsel and as *amicus curiae*. In particular, the ACLU has participated in numerous cases involving the Fourth Amendment and the exclusionary rule. Because this case raises those issues again, its proper resolution is a matter of significant concern to the ACLU and its members.

STATEMENT OF THE CASE

On January 5, 1991, respondent Isaac Evans was stopped for a traffic violation by Officer Bryan Sargent of the Phoenix Police Department. After respondent told the officer that his license had been suspended, the officer checked respondent's name on the police department's computerized information system in his patrol car. *See* J.A. 15-19.

The computer confirmed that respondent's license had been suspended and indicated that there was an outstanding misdemeanor warrant for his arrest. Respondent was then placed under arrest. Petitioner concedes that the officer would not have arrested respondent for either the traffic violation or for driving with a suspended license. Brief of Petitioner at 2. The sole basis for the arrest was the computer report. J.A. 23-25. While arresting respondent, the officer observed a handrolled cigarette fall to the ground. Respondent's vehicle was searched and marijuana was discovered under the

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[1]Letters of consent to the filing of this brief have been lodged with the Clerk of the Court pursuant to Rule 37.3.

passenger seat. J.A. 19-22. Respondent was then charged with possession of marijuana, as well.

Prior to trial, respondent moved to suppress the evidence found incident to his arrest. At the suppression hearing, it was determined that the misdemeanor warrant for his arrest had actually been quashed 17 days before his arrest. The warrant, however, had never been expunged from the computer system. The trial court made no factual finding on the source of the error. As the Arizona Supreme Court noted, "there was conflicting evidence concerning whether this mistake was caused by the court staff or law enforcement employees." *State v. Evans*, 866 P.2d 869, 870 (1994). After the suppression motion was granted, petitioner dismissed the charges and appealed.

The Arizona Court of Appeals reversed the trial court, but the Arizona Supreme Court vacated the appellate court decision and affirmed the suppression of the marijuana. The Arizona Supreme Court held that "the trial court did not abuse his discretion" under the facts presented. *Id.* at 872. Without resolving the factual dispute, the state supreme court ruled that respondent's "warrantless arrest, based entirely as it was on an erroneous computer entry, was plainly illegal." *Id.* at 871. The court distinguished *United States v. Leon*, 468 U.S. 897 (1984), because "no warrant at all was in existence at the time of [respondent's] arrest." *Evans*, 866 P.2d at 871. The court viewed *Leon* as a case which involved the exercise of judicial discretion. In contrast, it concluded the computer error here concerned the "performance of purely ministerial functions." *Id.* at 872.

In this Court, petitioner concedes that respondent's arrest violated the Fourth Amendment, Brief of Petitioner at 10, but argues that the exclusionary rule does not apply to the evidence obtained incident to that illegal arrest. Petitioner contends: (1) that the exclusionary rule is applicable only if

police had knowledge, or may properly be charged with knowledge, that their conduct violates the Fourth Amendment; (2) Officer Sargent acted in an objectively reasonable manner when he arrested respondent because the computer indicated an open warrant for his arrest; (3) the erroneous presence of the warrant in the computer was not the fault of police personnel, but of court personnel; (4) because there was no unlawful police misconduct, application of the exclusionary rule would have no deterrent effect in this case.

SUMMARY OF ARGUMENT

Petitioner challenges the ruling below as inconsistent with this Court's exclusionary rule cases. Selecting dicta from previous opinions, petitioner and its supporting *amici* argue that the exclusionary rule is applicable only when an officer has knowledge that an arrest violates the Constitution, or is blameworthy for performing an illegal search or seizure.

Contrary to petitioner's view, however, *Leon* did not adopt an omnibus "good faith" exception to the exclusionary rule. The exception approved in *Leon* "modified somewhat," 468 U.S. at 905, the traditional rule that law enforcement agencies are not permitted to exploit the fruits of unconstitutional conduct. *Leon* and its companion case, *Massachusetts v. Sheppard*, 468 U.S. 981 (1984), sanctioned the use of evidence obtained pursuant to illegal conduct in limited circumstances, namely, where police officers have utilized the warrant process -- the constitutionally preferred mode of procedure for governmental searches and seizures. The reasoning and result in *Leon* did not reflect myopic support for an all-embracing "good faith" exception. Rather, as Justice O'Connor has described, *Leon* relied upon a "tradition of judicial independence," *Illinois v. Krull*, 480 U.S. 340, 365 (1987)(dissenting opinion), to carve a narrow exception to the exclusionary rule when police officers follow

the warrant process contemplated by the Fourth Amendment and this Court's cases. In this case, no judicial procedures, or even independent police judgment, were invoked as a legal basis for respondent's arrest.

In addition to sliding over the lessons taught by *Leon*, petitioner's arguments understate the precedential force and relevance of *Whiteley v. Warden*, 401 U.S. 560 (1971), and *United States v. Hensley*, 469 U.S. 221 (1985). Under the holdings of those cases, law enforcement officers are permitted to rely on their "fellow officers" or other institutional procedures to make arrests and detentions, even when they themselves lack probable cause or reasonable suspicion for their actions. But the collective knowledge rule works both ways. Where an officer makes an arrest in good faith reliance on a computer report or radio bulletin that turns out to be incorrect, the stop is illegal and evidence seized pursuant to that stop is inadmissible. As Justice O'Connor explained when she wrote for the Court in *Hensley* -- a case decided *subsequent* to *Leon* -- "when evidence is uncovered during a search incident to an arrest in reliance merely on a flyer or bulletin, its admissibility turns on whether the officers who *issued* the flyer possessed probable cause to make the arrest. It does not turn on whether those relying on the flyer were themselves aware of the specific facts which led their colleagues to seek their assistance." *Hensley*, 469 U.S. at 231. At the time of respondent's arrest, the institutional actor responsible for instigating that arrest -- the police computerized information system -- had no legal basis for the arrest. In other words, respondent's arrest "stands on no firmer ground than if there had been no warrant at all." *Coolidge v. New Hampshire*, 403 U.S. 443, 453 (1971).

Petitioner and its supporting *amici* argue that the computer error was not the fault of police personnel, but of court staff. The result in this case should not depend on which agency was the source of the erroneous computer information. Invalid

and outdated information on open arrest warrants can come from various governmental sources. The position urged by petitioner suggests that governmental actors who disseminate to and receive data from police computers are not important players in the conduct at issue here. This argument ignores the reality of how computerized information on open arrest warrants is utilized by the government to effectuate arrests. State agencies and law enforcement personnel work hand-in-hand in an interconnected system. The careless record-keeping revealed below is just the type of government conduct that can be deterred by the exclusionary rule.

The arguments of petitioner also hint that the occurrence of erroneous computer reports is a rare phenomenon that is irrelevant to the issues raised in this case. In this regard, the Court should consider that a Federal Bureau of Investigation study of the country's computerized criminal information systems revealed that "[a]t least 12,000 invalid or inaccurate reports on suspects wanted for arrest are transmitted each day to Federal, state and local law-enforcement agencies."[2] This evidence and other empirical studies indicate there is an absence of careful monitoring of state and local computerized criminal information systems.[3] The existence of inaccurate information in police computers throughout the nation does not serve the interests of the law enforcement community and threatens the constitutional rights of thousands, if not millions, of ordinary citizens. Members of this Court have acknowledged that the scope and breadth of unconstitutional behavior is an important factor in deciding whether the exclusionary rule should be applied in a particular context. *See Illinois v. Krull*, 480 U.S. at 365 (O'Connor, J., dissenting) (noting an important distinction between an invalid search

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[2]David Burnham, *F.B.I. Says 12,000 Faulty Reports on Suspects are Issued Each Day*, N.Y. Times, Aug. 25, 1985, at 1.

[3]We will discuss some of the empirical studies below.

warrant that targets only one person and a legislature's illegal authorization of searches that affect the public). Empirical studies of computer systems and civil lawsuits brought by those who have been wrongly arrested show that the existence of inaccurate warrant reports in police computer systems "[c]ertainly . . . poses a greater threat to liberty," *id.*, than the police conduct at issue in *Leon*.

ARGUMENT

I. THE EXCLUSIONARY RULE APPLIES TO EVIDENCE DISCOVERED INCIDENT TO AN ARREST THAT IS BASED UPON AN ERRONEOUS POLICE COMPUTER REPORT THAT A MOTORIST IS WANTED FOR AN OPEN MISDEMEANOR WARRANT

When police officers obtain evidence in violation of the Fourth Amendment, the exclusionary rule normally precludes the use of that evidence in a criminal prosecution against the victim of the illegal search and seizure. *See Illinois v. Krull*, 480 U.S. 340, 347 (1987). The rule is designed "'to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures.'" *Krull*, 480 U.S. at 347, quoting *United States v. Calandra*, 414 U.S. 338, 347 (1974). As such, it is "a necessary cost of preserving overriding constitutional values." *James v. Illinois*, 493 U.S. 307, 311 (1990).

Whether the exclusionary rule will be applied in a particular case is determined by examining whether the rule's deterrent effect will be promoted, while weighing the costs of depriving a fact-finder of evidence obtained from illegal police conduct. *Krull*, 480 U.S. at 347; *Leon*, 468 U.S. at 906-07. When addressing this final point, foremost in this Court's analysis is the purpose of the rule -- to encourage "the law

enforcement profession as a whole to conduct themselves in accord with the Fourth Amendment." *Leon*, 468 U.S. at 919, n.20; *id.* at 918 ("If exclusion of evidence obtained pursuant to a subsequently invalidated warrant is to have any deterrent effect, therefore, it must alter the behavior of individual law enforcement officers or the policies of their departments"). As Justice Stevens has succinctly described: "The justification for the exclusion of evidence obtained by improper methods is to motivate the law enforcement profession as a whole -- not the aberrant individual officer -- to adopt and enforce regular procedures that will avoid the future invasion of the citizen's constitutional rights." *Dunaway v. New York*, 442 U.S. 200, 221 (1979)(concurring opinion).

A. *Leon* Reflected The Court's Longstanding Interest In Promoting Compliance With The Warrant Process

Properly understood, *Leon* represents only a slight modification of the exclusionary rule to allow the admission of evidence obtained in violation of the Fourth Amendment under narrow circumstances. Specifically, *Leon* holds that when an officer has acted in objective reliance on a search warrant issued by a neutral and detached magistrate, evidence secured pursuant to the warrant is admissible in the prosecution's case-in-chief, even if it is later determined that the warrant was issued without probable cause.[4]

As Justice O'Connor has observed, *Leon* "relied explicitly on the tradition of judicial independence" and its importance to the Fourth Amendment. *Krull*, 480 U.S. at 365 (dissenting opinion). That tradition predates the *Leon* ruling. In 1932, for example, the Court explained that a judge was the

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[4]The Court noted at least four exceptions that would justify exclusion of illegally obtained evidence even where a seemingly valid warrant had been secured by the police. *Leon*, 468 U.S. at 923.

constitutionally preferred arbiter of whether probable cause exists to support a search. The "informed and deliberate determination of magistrates empowered to issue warrants as to what searches and seizures are permissible under the Constitution are to be preferred over the hurried action of officers and others who may happen to make arrests." *United States v. Lefkowitz*, 285 U.S. 452, 464 (1932). Rather than rely on the judgment or discretion of the officer in the field, the Fourth Amendment contemplates a process where law enforcement officers present evidence to a neutral and detached judicial officer to decide whether the government has probable cause for a search, unless exigent circumstances preclude such a process. *Johnson v. United States*, 333 U.S. 10, 13-14 (1948).[5]

The important role of the magistrate's determination of probable cause was again emphasized in *United States v. Ventresca*, 380 U.S. 102 (1965), and *Spinelli v. United States*, 393 U.S. 410 (1968). In *Ventresca*, the Court explained that a doubtful or marginal probable cause determination will be sustained where it is the result of a process where an officer has sought a magistrate's approval for a search. Similarly, in *Spinelli*, while articulating the standards that police affidavits must satisfy, the Court expressly noted that its ruling marked no retreat from the principle that a magistrate's "determination of probable cause should be paid great deference by reviewing

[5]*See also McDonald v. United States*, 335 U.S. 451, 455-56 (1948) ("The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done not to shield criminals nor to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals").

courts." *Spinelli*, 393 U.S. at 419. Such deference is appropriate not because magistrates are infallible, but because the Court long ago concluded that the process of obtaining a warrant "provides the detached scrutiny of a neutral magistrate, which is a more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer 'engaged in the often competitive enterprise of ferreting out crime.'" *United States v. Chadwick*, 433 U.S. 1, 9 (1977), quoting *Johnson v. United States*, 333 U.S. 10, 14 (1948).

More recently, *Illinois v. Gates*, 462 U.S. 213 (1983), reiterated that a magistrate's probable cause determination should not be disturbed unless it can be said that there was not a substantial basis supporting the decision. Because reasonable persons often disagree over whether a particular warrant application establishes probable cause, *Gates*, like the cases before it, made plain that a magistrate's probable cause determination should be viewed as an informed assessment of the allegations presented by the officer.

The reasoning of *Gates* (and the cases noted above) encourages police officers to utilize the warrant process.[6] It is common knowledge that many officers prefer to bypass the warrant process.[7] When officers utilize the warrant process, however, they provide a written record, *before the intrusion*, of their allegations that facilitates and makes more reliable subsequent review by a court. This process, moreover, discourages police perjury and prevents after-the-fact hindsight

[6]*Cf. Malley v. Briggs*, 475 U.S. 335, 353 (1986)(Powell, J., concurring in part and dissenting in part)("The police, where they have reason to believe probable cause exists, should be encouraged to submit affidavits to judicial officers")(footnote omitted).

[7]*See* Richard Van Duizend, L. Paul Sutton & Charlotte A. Carter, *THE SEARCH WARRANT PROCESS: PRECONCEPTIONS, PERCEPTIONS, AND PRACTICES* 66 (1983).

from influencing the resolution of the issue of probable cause. *Gates* recognized that a grudging review of warrants might lead some officers to resort "to warrantless searches, with the hope of relying on consent or some other exception to the Warrant Clause that might develop at the time of the search." *Gates*, 462 U.S. at 236. Also, when officers invoke the judicial process to obtain warrants, the public is notified of the lawfulness of the officer's behavior. As Chief Justice Burger observed, a warrant informs "the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the limits of his power to search." *United States v. Chadwick*, 433 U.S. 1, 9 (1977); *cf. Camara v. Municipal Court*, 387 U.S. 523, 532 (1967)(a system of warrantless administrative housing inspections undermines an occupant's ability "of knowing whether the inspector himself is acting under proper authorization").

As noted, *Leon* relied upon the "tradition of judicial independence," *Krull*, 480 U.S. at 365 (O'Connor, J., dissenting), that had been reaffirmed in *Gates* to carve out an exception to the normal rule of exclusion of unlawfully obtained evidence. The *Leon* Court was comfortable in permitting the use of illegally obtained evidence under the particular circumstances presented to it. Those circumstances involved police officers utilizing the warrant process -- the very same process that for many decades the Court had been urging the police to invoke. Where the warrant process had been used by the police, this Court found that suppression of evidence later determined to be unlawfully obtained was inconsistent with the deterrent purpose of the exclusionary rule.

Like *Gates*, *Leon* rested upon this Court's faith in the warrant process and continued belief that police officers should be encouraged to obtain warrants before undertaking searches and seizures. The Court found "no evidence suggesting that judges and magistrates are inclined to ignore

or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction of exclusion." *Leon*, 468 U.S. at 916 (footnote omitted). Accordingly, the Court held that when an officer invokes the warrant process and relies on the magistrate's judgment for assessing whether probable cause exists, an exception to the normal rule of exclusion exists to sanction the officer's reliance on the constitutionally preferred mode of process.[8]

A clear message emerges from the Court's cases: Warrants should be issued where police officers provide sufficient evidence of criminality, and law enforcement agencies that follow this process will not have evidence suppressed where it is subsequently determined that a warrant was not supported by probable cause or was invalid on technical grounds. Simply put, the warrant process is the constitutionally preferred mode for intruding upon an individual's privacy and personal security, and the exclusionary rule does not apply in cases where a "reasonably well-trained officer," *Leon*, 468 U.S. at 922, n.23, has complied with this process.[9]

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[8]*Illinois v. Krull*, 480 U.S. 340 (1987), is not inconsistent with this tradition. *Krull* ruled that the exclusionary rule would not apply where an officer acts in reasonable reliance on a statutory authorization for a search which is subsequently declared invalid by the judiciary. Like *Leon*, *Krull* encourages police officers to comply with rules and procedures established by high-ranking officials who are not part of the "law enforcement" team. *Krull* recognizes that police officers should not be responsible for assessing the constitutionality of statutes. A statute informs the police of the scope and limits of their authority; the discretion of the officer is restrained by legislative guidelines.

[9]These rulings promote Fourth Amendment values by forcing police officers "to stop, think, write down their evidence, and submit it to someone else for approval. Aside from the obvious salutary effect that those requirements have in curbing police impetuosity, they also make it

(continued...)

B. The Law Enforcement Conduct In The Instant Case Does Not Satisfy The Dictates That Were Established In *Leon*

It is obvious that the law enforcement conduct in the present case is a far cry from the procedures encouraged in *Leon* and *Sheppard*. Respondent's illegal arrest was based neither on a judicial determination of probable cause, nor upon Officer Sargent's independent judgment that probable cause existed for the arrest.[10] *See United States v. Watson*, 423 U.S. 411 (1976)(law enforcement officer may, consistent with the Fourth Amendment, make warrantless arrest where probable cause exists that arrestee has committed an offense). The sole basis for respondent's unlawful arrest was the erroneous police computer message. An illegal arrest based on a stale and invalid computer communication should not be analogized to the judicial process at issue in *Leon*. When respondent's automobile was stopped for a traffic violation, there was no existing warrant for his arrest. When Officer Sargent arrested respondent, he was not relying on a facially valid judicial order that would be subsequently declared invalid. Nor was this arrest based upon the officer's on-the-scene, independent assessment of probable cause. In sum, there was no legal basis for the arrest.

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[9](...continued)
more difficult for the police to fabricate probable cause on the basis of what was found instead of what was actually known in advance." Craig M. Bradley, *The "Good Faith Exception" Cases: Reasonable Exercise in Futility*, 60 Ind. L.J. 287, 292 (1985).

[10]The arresting officer testified that he had no knowledge about the facts or basis for the outstanding misdemeanor warrant: "Q. At that time [when respondent was about to be placed under arrest], did you know what that misdemeanor warrant was for? A. No." J.A. 19.

C. *Leon* Did Not Adopt A Comprehensive "Good Faith" Exception To The Exclusionary Rule

The petitioner and other *amici* emphasize that the arresting officer was not responsible for the computer error and had no knowledge that the warrant had been quashed. They assert that the officer relied in "good faith" upon the computer information and acted in an objectively reasonable manner. The problem with these arguments is that they ignore the lessons taught by *Leon*.

Leon did not endorse a universal "good faith" exception to the normal rule of exclusion. In fact, the "good faith" exception is a misnomer; the narrow exception approved in *Leon* is not applicable whenever an officer acts in "good faith" or is without fault for the infringement of someone's Fourth Amendment rights.[11] To the contrary, the Court cautioned that its opinion should not be read to suggest "that exclusion is always inappropriate in cases where an officer has obtained a warrant and abided by its terms." *Leon*, 468 U.S. at 922. For example, the Court explained that suppression remains an appropriate remedy where, despite the executing or arresting officer's "good faith," the warrant process is tainted by police misconduct,[12] impaired by an inherent malfunction,[13] or

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[11]*See* David Clark Esseks, Note, *Errors in Good Faith: The Leon Exception Six Years Later*, 89 U.Mich. L.Rev. 625, 653 (1990)(commentators on the exclusionary rule often discuss "the propriety of a 'good faith' exception, not always distinguishing between the reasonable reliance type of exception eventually adopted in *Leon* and one that would also excuse an officer's mistaken subjective good faith, and not always confining the exception they advocated to the search warrant context")(footnote omitted).

[12]*Leon*, 468 U.S. at 923 (suppression is proper remedy if magistrate "was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth").

[13]*Id.* (suppression proper where magistrate "wholly abandoned his judicial
(continued...)

produces a judicial order that is inconsistent with the commands of the Constitution.[14]

Leon also made plain that exclusion is still proper when an officer in "good faith" and without fault relies on another officer's or department's decision to procure a search or arrest warrant. *See Leon*, 468 U.S. at 923, n.24. *Leon* leaves no doubt that the subjective good faith or lack of fault of the arresting officer is irrelevant for deciding whether the exclusionary rule will be applied in a contested case. *Leon*, 468 U.S. at 919, n.20 ("We emphasize that the standard of reasonableness we adopt is an objective one").

The petitioner's arguments misunderstand the broad purposes of the exclusionary rule and the narrow exception that *Leon* adopted. Application of the rule does not turn on the "good faith" of the officer who acts at the end of the police chain-of-command. Evidence seized by an officer pursuant to a warrant that has been obtained by another officer using an affidavit containing inadequate information does not qualify for admission under this Court's cases, even though the officer executing the warrant did nothing wrong and acted in "good faith" reliance on the warrant. *See Leon*, 468 U.S. at 923, n.24 ("Nothing in our opinion suggests, for example, that an officer could obtain a warrant on the basis of a 'bare bones' affidavit and then rely on colleagues who are ignorant of the circumstances under which the warrant was obtained to conduct the search. *See Whiteley v. Warden*, 401 U.S. 560, 568 (1971)").

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[13](...continued)
role" in overseeing warrant process), citing *Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319 (1979).

[14]*Leon*, 468 U.S. at 923 (suppression appropriate when warrant issued is "'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable,'" or is facially deficient that "executing officers cannot reasonably presume it to be valid")(citation omitted).

Rather than turning on the good faith or honest belief of an officer who acts pursuant to another officer's request or institutional command, application of the exclusionary rule depends upon a more nuanced inquiry. The rule is aimed at an audience broader than the patrol officer who acts without fault, or honestly believes his actions comport with the Fourth Amendment. As Justice White explained in *Leon*, "'[g]rounding the modification in objective reasonableness, however, retains the value of the exclusionary rule as an incentive for the *law enforcement profession as a whole* to conduct themselves in accord with the Fourth Amendment.'" *Leon*, 468 U.S. at 919-20, n.20 (emphasis added), quoting *Illinois v. Gates*, 462 U.S. 213, 261, n.15 (White, J., concurring in the judgment). Here, Officer Sargent's "good faith" reliance on the computer cannot excuse the illegal arrest or justify admission of the evidence obtained incident to that arrest.

II. THIS COURT'S PRECEDENTS ESTABLISH THAT EVIDENCE OBTAINED INCIDENT TO AN ILLEGAL ARREST CANNOT BE INSULATED FROM CHALLENGE DUE TO THE GOOD FAITH OF THE ARRESTING OFFICER

Prior precedents of the Court have anticipated and rejected the same arguments pressed by petitioner and the dissent of Justice Martone of the Arizona Supreme Court. Petitioner emphasizes that the arresting officer "had no knowledge, and cannot properly be charged with knowledge, that the warrant had been quashed." Brief of Petitioner at 9. In a similar vein, the dissent below argued the arresting "police department was not responsible for the error." *Evans*, 866 P.2d at 873. Justice Martone wrote that: "The officer arrested [respondent] in good faith on a facially valid warrant." *Id.*

These arguments ignore the holdings of *Whiteley v. Warden*, 401 U.S. 560 (1971) and *United States v. Hensley*, 469 U.S. 221 (1985). In *Whiteley*, a police officer, relying in good faith on a radio bulletin issued by another department, arrested Whiteley and a companion and discovered incriminating evidence incident to the arrest. As in the instant case, the arresting police department in *Whiteley* "was not responsible" for the error that resulted in the magistrate's issuance of an invalid arrest warrant. In *Whiteley*, as in this case, the arresting officer in good faith relied upon a presumptively valid institutional procedure, the police bulletin, as the legal basis for the arrest. Notwithstanding this type of "good faith" by the arresting officer, this Court had little trouble concluding that "an otherwise illegal arrest cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make the arrest," and the evidence obtained from that arrest "should have been excluded from [the] trial." *Whiteley*, 401 U.S. at 568-69.[15]

The dissent below of Justice Martone also stated that "[w]hen the computer shows an outstanding arrest warrant, the officer is expected to make an arrest." *Evans*, 866 P.2d at 873. Such an officer, according to Justice Martone, "is in the same position as one who holds an arrest warrant in his hand. It makes no difference whether, after issuance, a warrant is quashed or otherwise invalid." *Id.* All of this was true in *Whiteley* too, but the Court did not hesitate to find that the Fourth Amendment had been violated and that evidence found pursuant to such an illegal arrest should not have been admitted at Whiteley's trial.

The officer in *Whiteley* also was expected to make an arrest when he came upon the automobile and individuals

[15]The result in *Whiteley* has never been questioned by the Court, and was cited with approval in *Leon*. *See Leon*, 468 U.S. at 923, n.24.

described in the radio bulletin. At the time that he stopped Whiteley, that officer occupied the same position as one who holds an arrest warrant. But, contrary to Justice Martone's argument, *it does make a difference* under this Court's cases whether, after issuance, a warrant is quashed or otherwise invalid. This is the lesson that *Whiteley* and *United States v. Hensley*, 469 U.S. 221 (1985), teach. Officers are free to rely on institutional procedures to make arrests and detentions, even though they themselves do not possess probable cause or reasonable suspicion for the stop. But the collective knowledge rule works both ways. Where an officer makes an arrest or a detention in good faith reliance on a computer report or radio bulletin that turns out to be incorrect, the stop is illegal and evidence seized pursuant to that stop is inadmissible.

The reasoning and result in *Leon* cast no doubt on the continuing validity of *Whiteley*. As noted, *Leon* approvingly cited *Whiteley*. *See Leon*, 468 U.S. at 923, n.24. Moreover, in a case decided subsequent to *Leon*, this Court reaffirmed its commitment to *Whiteley*. In *Hensley*, Justice O'Connor's majority opinion invoked the reasoning of *Whiteley* to explain that "when evidence is uncovered during a search incident to an arrest in reliance merely on a flyer or bulletin, its admissibility turns on whether the officers who *issued* the flyer possessed probable cause to make the arrest. It does not turn on whether those relying on the flyer were themselves aware of the specific facts which led their colleagues to seek their assistance." 469 U.S. at 231.[16] Because there were no legal grounds for the open misdemeanor warrant in the computer, respondent's arrest "stands on no firmer ground than

[16]The issue in *Hensley* and *Whiteley* is not whether the arresting officer himself possessed probable cause, but the degree and accuracy of the information possessed by law enforcement as a whole. So too in the instant case, the real issue is the validity of the computer information utilized by Officer Sargent, not who generated it.

if there had been no warrant at all." *Coolidge v. New Hampshire*, 403 U.S. 443, 453 (1971).[17]

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[17]Combining dicta from *Whiteley* and *Hensley*, and statements from the Court's qualified immunity cases, the Brief *Amicus Curiae* of the Washington Legal Foundation at 22-26 contends that the exclusionary rule is inapplicable where officers would not be held liable for civil damages as a result of their unconstitutional actions. Although Justice White once suggested this same model for deciding exclusionary rule cases, *see Stone v. Powell*, 428 U.S. 465, 541-42 (1976)(White, J., dissenting), there are sound reasons why the Court has rejected this proposal. Indeed, Justice White, the author of *Leon*, later recognized that the analogy between the qualified immunity cases and proper application of the exclusionary rule is not perfect. *Leon*, 468 U.S. at 922, n.23.

First, when a plaintiff brings a civil lawsuit against an officer for conduct that violated the Constitution, the plaintiff is seeking to vindicate a personal right, as well to deter future unconstitutional behavior. *See Owen v. City of Independence*, 445 U.S. 622, 651 (1980). In contrast, the remedy of exclusion in a criminal case is not a "personal constitutional right" of a defendant. *Leon*, 468 U.S. at 906, quoting *Calandra*, 414 U.S. at 348.

Furthermore, under the Court's qualified immunity cases, an officer who acts in good faith but mistakenly believes that his conduct comports with the Fourth Amendment will not be held liable unless his actions violated clearly established law. *See Anderson v. Creighton*, 483 U.S. 635, 641 (1987); *Malley v. Briggs*, 475 U.S. 335, 344-45 (1986). Such a rule protects police officers who act in a reasonable manner. *See* Wayne R. LaFave, *The Fourth Amendment in an Imperfect World: On Drawing "Bright Lines" and "Good Faith"*, 43 U. Pitt. L.Rev. 307, 345 (1982). But the rationale underlying qualified immunity for an individual officer who acts in mistaken "good faith" has no application in an exclusionary rule context because the focus of the exclusionary rule is on "the law enforcement profession as a whole." *Leon*, 468 U.S. at 919, n.20, quoting *Gates*, 462 U.S. at 261, n.15 (White, J., concurring in judgment).

Contrary to the assertions of the Washington Legal Foundation, the lack of fault of Officer Sargent is irrelevant to this case. The "exclusionary rule's purpose is not only, or even primarily, to deter the individual officer involved in the instant case." *Gates*, 462 U.S. at 261, n.15 (White, J., concurring in judgment). The rule is not designed to punish "the aberrant (continued...)

III. THE RESOLUTION OF THIS CASE SHOULD NOT DEPEND ON THE SOURCE OF THE COMPUTER ERROR

The result in this case should not turn on which agency was responsible for the error retaining respondent's name in the police computer system. Inaccurate computer data on outstanding arrest warrants come from various sources. Errors can be the responsibility of a local police department, a state police agency, an administrative agency not responsible for law enforcement activities, a state motor vehicle department, a state parole office, or court staff. If petitioner's position were accepted, lower courts would have to decide which governmental agency was source of the error. What if the mistake was the fault of personnel from the National Crime Information Center (NCIC) or one of the parallel state systems? Are these governmental actors considered "law enforcement" personnel such that their errors would lead to application of the exclusionary rule? Or, should their actions, albeit widely used by law enforcement officers throughout the

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[17](...continued)
individual officer," *Dunaway v. New York*, 442 U.S. 200, 221 (1979) (Stevens, J., concurring), but to deter, educate and motivate "the law enforcement profession as a whole to conduct themselves in accord with the Fourth Amendment." *Leon*, 468 U.S. at 919 n.20, quoting *Gates*, 462 U.S. at 261, n.15 (White, J., concurring in judgment). Failure to apply the exclusionary rule here would send an unfortunate message to those who disseminate to and receive information from police computers that there is no need to be careful in the handling and monitoring of data on outstanding arrest warrants.

As Professor Yale Kamisar has noted, a better analogy between "constitutional tort" law and the law governing the exclusionary rule is found in "a civil action against the municipality itself." *See* Yale Kamisar, *Gates, "Probable Cause," "Good Faith," and Beyond*, 69 Iowa L.Rev. 551, 594-95 (1984)(noting that *Owen v. City of Independence*, 445 U.S. 622 (1980), ruled that a governmental entity may not assert the good faith of its officers as a defense to liability in a constitutional tort case).

country, nonetheless be deemed administrative or magisterial that the exclusionary rule would not apply where their errors lead to illegal arrests and searches? Petitioner's position would also have the unwelcomed effect of pitting different governmental agencies against each other where an arrest is the result of a computer error. The rule proposed by the petitioner and its *amici* will only enlarge the number of issues contested at suppression hearings.

Moreover, the facile argument that application of the exclusionary rule turns on whether the police are responsible for the mistake ignores the reality of how computerized information on open arrest warrants is utilized by governmental actors. The NCIC and parallel state systems transmit and store information on wanted persons from many different state and federal agencies. Over 60,000 agencies use the NCIC system to check for open arrest warrants; many other checks are conducted on state systems. When a state motor vehicles department places a person's name in the system for driving with a suspended license, or when court personnel report an open warrant for failure to appear at a traffic hearing, they do so in order to enlist the services of law enforcement officers. In other words, state agencies and the police work together in an interconnected system. As one judge has cogently noted:

> It is artificial to break the agencies apart when viewing the consequences to the motoring public of errors of recordkeeping. The state should not benefit from compartmentalizing its responsibility to the public into separate but obviously interdependent agencies without some rationale to support this result. From the standpoint of fairness, it makes no difference that a motorist is victimized by misfunctions in recordkeeping at [a state motor vehicle department] rather than at the Department of Public Safety.[18]

This Court Should Not Resolve The Factual Issue Concerning The Source Of The Computer Error In This Case

Petitioner argues that "[t]he 'critical mistake' that caused the Fourth Amendment violation in this case was made by justice court personnel who failed to have the quashed warrant removed from the computer system." Brief of Petitioner at 9.[19] We agree with the court below that the source of the computer error is immaterial to a proper resolution of this case. To the extent, however, that this Court believes otherwise, petitioner's claim that the source of the computer error was caused by court personnel is not supported by the record. The Arizona Supreme Court chose not to resolve this factual issue.[20] This Court is not the proper forum for deciding disputed factual issues not resolved below. In past cases, this Court has been reluctant to engage in the type of fact-finding mission that the petitioner now urges. *Michigan v. Long*, 463 U.S. 1032, 1053 (1983); *Combs v. United States*,

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[18]*State v. Lanoue*, 587 A.2d 405, 408 (Vt. 1991)(Morse, J., dissenting).

[19]Petitioner's supporting *amici* make similar assertions. *See* Brief *Amicus Curiae* of Washington Legal Foundation at 4, 7, 17, 21 & 22.

[20]Twice in its opinion, the Arizona Supreme Court emphasized that it was not deciding which agency personnel were responsible for the computer error. *See Evans*, 866 P.2d at 871: "We are unable to follow the lead of the court of appeals in dismissing conflicting inferences raised by evidence on the issue of whether fault rested with the justice court, the police, or both. Testimony at the suppression hearing failed to clearly establish whether a telephone call from the court to the police, advising that the warrant had been quashed, was made but not entered in the record, or was never made at all." *Id.* "Whether the erroneous computer record was the fault of police or justice court personnel should be of no consequence even though, as we have noted, evidence on this point was by no means as clear as the state now suggests." *Id.*

408 U.S. 224, 228 (1972)(*per curiam*). Petitioner has offered no compelling reason for the Court to depart from this tradition.

IV. THE VOLUME OF INACCURATE AND OUTDATED INFORMATION IN LAW ENFORCEMENT COMPUTER SYSTEMS IS A FACTOR IN ASSESSING WHETHER THE EXCLUSIONARY RULE APPLIES TO THIS CASE

The arguments of petitioner suggest that inaccurate and stale information in police computers is a rare phenomenon that is unimportant to the questions raised in this case. Petitioner baldly asserts that there is "no evidence suggesting that employees of judges and magistrates are . . . inclined to engage in" conduct that jeopardizes Fourth Amendment rights. Brief of Petitioner at 11. This claim flies in the face of empirical studies and other evidence. For example, a 1985 Federal Bureau of Investigation study found that "[a]t least 12,000 invalid or inaccurate reports on suspects wanted for arrest are transmitted each day to Federal, state and local law-enforcement agencies."[21] Although the FBI study is several years old, one scholar found that the "FBI research *underestimates* the problem" of inaccurate and outdated data on outstanding arrest warrants.[22] While the FBI study found a 6 percent error rate in warrants, other empirical research "of a representative sample of warrants found the error rate to be

[21]David Burnham, *F.B.I. Says 12,000 Faulty Reports on Suspects Are Issued Each Day*, N.Y. Times, Aug. 25, 1985, at 1.

[22]Kenneth C. Laudon, *DOSSIER SOCIETY: VALUE CHOICES IN THE DESIGN OF NATIONAL INFORMATION SYSTEMS* 145 (1986) (emphasis added).

11 percent."[23] This research, conducted by the nation's leading scholar on computerized criminal history records, made the following observation about the NCIC: Over "14,000 persons are at risk of being falsely detained and perhaps arrested, because of invalid warrants in the system."[24]

The quality of information in local systems tends to vary from state to state. But if the information in a local system is inaccurate, often it is impossible to prevent this faulty data from being transmitted to other law enforcement agencies. Because the NCIC accepts data sent by state and local agencies, the "national system is only as accurate as the local and state law enforcement records that constitute it."[25] More particularly, one researcher found that mistakes in the nation's law enforcement computers regarding open arrest warrants have violated the constitutional rights of many innocent

[23]*Id.*

[24]Laudon, *supra* note 22 at 144. Laudon's research also revealed: (1) "8,000 persons are at risk of being detained, and perhaps arrested, but subsequently neither extradited nor prosecuted because of the non-serious nature of their indicated offense," and (2) "19,000 persons whose outstanding warrants are valid but more than five years old are at risk of being detained and perhaps arrested, but neither prosecuted nor extradited due to the age of the outstanding warrant." *Id.* at 144-45.

[25]Diana R. Gordon, *THE JUSTICE JUGGERNAUT* 72 (1990). Another researcher wrote that

> a Midwest prosecuting attorney conducted a review of all arrest warrants from his county listed on NCIC. He looked at cases that were between one and twenty-three years old. Taking into account the availability of witnesses and new evidence that had come to light, the prosecutor concluded that 73 percent of the cases he examined were no longer provable -- and many weren't even open anymore. Yet NCIC still listed ongoing arrest warrants for the cases.

Jeffrey Rothfeder, *PRIVACY FOR SALE* 132 (1992).

persons:

> Plaintiffs in Louisiana, California, New York, and Massachusetts, to name a few, have sued police for wrongful detention of up to four months. The victim is typically black or Hispanic, has a relatively common name, and is picked up in a traffic offense or border check on the warrant of someone charged with a serious offense. Sometimes the problem is the failure to remove a warrant that was in error in the first place; a Boston plaintiff was jailed because the police had not corrected the report of a stolen car that had, in fact, been borrowed by a relative . . . . Law enforcement officials are the first to admit that once these errors are made they are hard to correct. When Shirley Jones, a New Orleans woman who was taken from her home and small children and held overnight on a "wrong warrant" for welfare fraud, was finally released, a sheriff's deputy told her to change her name or she would face a repeat of the incident.[26]

These reports indicate an absence of careful monitoring of state and local computerized criminal information systems.[27] More importantly, this type of negligent institutional record-keeping is precisely the sort of conduct that can be deterred by

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[26]Gordon, *supra* note 25 at 73-74 (footnotes omitted).

[27]The FBI study noted earlier found that "[i]n a 10-day period in March [1985], 13.2 percent of a sample of reports placed in the F.B.I. system by Alabama agencies were invalid because the underlying warrants had been dismissed or otherwise acted upon. Another 8.7 percent had incorrect information about the height, weight and date of birth of the wanted person. Such information is essential to help police avoid arresting the wrong person." Burnham, *supra* note 21.

the exclusionary rule. A contrary holding would perhaps encourage careless behavior by officials whose work is interdependent with police officers who effectuate arrests. As Professor LaFave has observed: "To apply the exclusionary rule when an individual officer oversteps his bounds but not when the violation of the Fourth Amendment is caused by *systemic defects* would be to turn the Fourth Amendment on its head." 1 Wayne R. LaFave, *SEARCH AND SEIZURE* §1.2(d), at 41 (2d ed. 1987)(emphasis added)(footnote omitted).

Erroneous and outdated information in police computers does not promote effective law enforcement and threatens the constitutional rights of thousands, if not millions, of ordinary citizens. Members of this Court have acknowledged that the scope and breadth of unconstitutional behavior is a material circumstance in deciding whether the exclusionary rule should be applied in a particular context. *See Illinois v. Krull*, 480 U.S. at 365 (O'Connor, J., dissenting)(noting an important distinction between an invalid search warrant that targets only one person and a legislature's illegal authorization of searches that affect the public). Although researchers concede that there are fewer errors in computer systems than in manual records, the mistakes that do exist "have more impact now because they travel farther, are seen by more people, are copied and recopied, and have more uses."[28]

Accordingly, inaccurate and outdated arrest warrants in police computers jeopardize Fourth Amendment interests in a manner not at issue in *Leon*. As one scholar of the subject has observed:

> Warrant files at state and federal levels are universally exempted from any statutory controls. This affords law enforcement officers the

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[28]Gordon, *supra* note 25 at 72.

> opportunity of detaining persons for a period ranging from a few seconds up to several hours to confirm warrants. Thus, it is reasonable to believe that the unregulated proliferation of wanted person files at both state and federal levels may lead to a distortion of the police role in American society and alter the relationship between police and citizenry. Ultimately, this may threaten the enjoyment of constitutional protection by ordinary citizens guilty of nothing more than traffic violations or, in some cases, guilty of nothing more than riding in an automobile on the street.[29]

Put simply, the existence of inaccurate warrant reports in police computer systems imperils the constitutional interests of many persons, and therefore, "[c]ertainly . . . poses a greater threat to liberty," *Krull*, 480 U.S. at 365 (O'Connor, J., dissenting), than the constitutional error at issue in *Leon* which only targeted selected individuals.

[29]Laudon, *supra* note 22 at 243.

CONCLUSION

For the reasons stated above, the judgment of the Supreme Court of Arizona should be affirmed.

Respectfully submitted,

Tracey Maclin
(*Counsel of Record*)
Boston University School of Law
765 Commonwealth Avenue
Boston, Massachusetts 02215
(617) 353-4688

Steven R. Shapiro
American Civil Liberties Union
Foundation
132 West 43 Street
New York, New York 10036
(212) 944-9800

Alice L. Bendheim
1542 West McDowell Road
Phoenix, Arizona 85007
(602) 253-2954

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